

These are the tentative rulings for civil law and motion matters set for Tuesday, July 15, 2014, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Monday, July 14, 2014. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

**NOTE: Effective July 1, 2014, all telephone appearances will be governed by Local Rule 20.8. More information is available at the court's website, [www.placer.courts.ca.gov](http://www.placer.courts.ca.gov).**

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**EXCEPT AS OTHERWISE NOTED, THESE TENTATIVE RULINGS ARE ISSUED BY JUDGE DENNIS J. BUCKLEY AND IF ORAL ARGUMENT IS REQUESTED, ORAL ARGUMENT WILL BE HEARD IN DEPARTMENT 40, LOCATED AT 10820 JUSTICE CENTER DRIVE, ROSEVILLE, CALIFORNIA.**

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**1. M-CV-0058699 Baldwin Contracting Co., Inc. vs. Sierra Pacific Ind., et al**

Defendant Sierra Pacific Industries' motion for leave to file cross-complaint is granted. Sierra Pacific Industries shall cause its cross-complaint to be filed by no later than July 29, 2014.

**2. M-CV-0059951 Buisson, Linda Jean Styve vs. Deloach, Nancy Ann, et al**

Plaintiff Linda Buisson's ("Buisson's") "Motion for Discussion Points for Scheduled Motion Hearing" is denied.

It appears that Buisson seeks a determination and order of the court, pursuant to Code of Civil Procedure section 437c(s), that the parties may move for summary adjudication of a particular issue, which does not completely dispose of a cause of action, affirmative defense, or issue of duty. The statute requires that the parties submit a joint stipulation setting forth the issue to be adjudicated, with a declaration from each stipulating party demonstrating that a ruling on the motion will further the interests of judicial economy by reducing the time to be consumed in trial, or significantly increasing the probability of settlement. Code Civ. Proc. § 437c(s)(3). For purposes of Buisson's present motion, she has not submitted a stipulation. In fact, defendants oppose the request, so Buisson may not obtain a determination and order of the court pursuant to Code of Civil Procedure section 437c(s).

Buisson notes that defendants previously executed a stipulation seeking the same order. However, the request was denied, as it failed to comply with the statute by including declarations from either party. Defendants have since refused to execute an amended stipulation, and in fact assert that they cannot truthfully submit a declaration which states that adjudication of the

requested issue will reduce the time to be consumed at trial or increase the probability of settlement. Under these circumstances, the court cannot force defendants to sign the amended stipulation submitted by Buisson.

Finally, Buisson is not entitled to an informal conference to permit further evaluation of the proposed stipulation. Such a conference is permitted under Code of Civil Procedure section 437c(s)(3) upon the stipulating parties' request. Defendants have not requested such a conference, and have withdrawn their support for the proposed stipulation.

**3. S-CV-0026470 Loomis Land, Inc. vs. Stoneridge Realty Inc., et al**

Appearance required on July 15, 2014 at 8:30 a.m. in Department 32 on the Order to Show Cause re Settlement.

The motion for attorneys' fees is continued to August 7, 2014 at 8:30 a.m. in Department 40 to be heard by Commissioner Michael A. Jacques.

**4. S-CV-0030715 Zaslove, Michael, et al vs. Regal Custom Homes**

Enigma Tile Company, Inc.'s motion for determination of good faith settlement is denied without prejudice. The proof of service indicates that the motion was served on June 24, 2014, by mail. Thus, moving party served the motion only 14 court days prior to the hearing. As insufficient notice time was provided, the motion may not be granted. Code Civ. Proc. § 1005(b).

**5. S-CV-0032545 Kopp, Debra vs. Horizon Charter School**

The demurrer to first amended complaint was continued to September 16, 2014 at 8:30 a.m. in Department 40.

**6. S-CV-0032859 Reeve-Knight Construction, Inc. vs. Airco Mechanical, et al**

Plaintiff and cross-defendant Reeve-Knight Construction, Inc.'s ("RKC's") motion to designate case complex and appoint Peter H. Dekker as special master is denied.

A construction defect action may provisionally be designated as complex where it involves many parties or structures. Cal. R. Ct., rule 3.400(c)(2). This action involves six parties, which is a relatively low number for purposes of construction defect actions. It also involves only one three-story building. RKC does not establish that any factors the court must consider to determine whether an action is complex under California Rules of Court, rule 3.400(b), weigh in favor of a complex designation. Specifically, there is no indication that numerous pretrial motions will raise difficult or novel legal issues, that there are a large number of witnesses, a substantial amount of documentary evidence, or a large number of separately represented parties which require management, that coordination with any related actions will be necessary, or that substantial postjudgment judicial supervision will be required. Accordingly, RKC's request to designate this case as complex is denied.

RKC also fails to establish that appointment of a special master is necessary under the circumstances of this case. RKC references 1,600 pages of documents, but this is not an exceedingly high number of documents for a civil action involving construction defect claims. Formal discovery has already apparently proceeded in an orderly fashion, without the need for court intervention. According to opposing party James Brian Guertin, individually and dba Norcal Plastering, the parties have agreed to participate in mediation with the proposed special master. At this point, there does not appear to be any compelling reason to appoint a special master to oversee aspects of this case.

**7. S-CV-0032925 Peterson, Anna, et al vs. Autumn Oaks - 216, Ltd., et al**

The motion of John C. Miller, Jr. and Miller Law, Inc. to be relieved as counsel for plaintiffs is denied without prejudice. On October 11, 2013, the court entered an order granting defendant's motion to compel arbitration, and staying this action. As the action has been stayed, this court has no continuing jurisdiction over the case, except for certain specified circumstances. *See* Code Civ. Proc. §§ 1281.6, 1281.1, 1283.8, 1286. Plaintiffs' counsel provides no authority for the court's ability to rule on his motion during the pendency of the stay. Further, the motion lacks sufficient facts to support the relief sought.

If oral argument is requested, Mr. Miller's request for telephonic appearance is granted. All telephonic appearances are governed by Local Rule 20.8.

**8. S-CV-0033871 California Capital Insurance Co. vs. Fuller, Jacqueline M.**

This tentative ruling is issued by the Honorable Michael W. Jones. If oral argument is requested, it shall be heard on July 15, 2014 at 8:30 a.m. in Department 43.

Plaintiff California Capital Insurance Co.'s Motion for Award of Attorney Fees and Expenses is granted in part.

This property damage insurance subrogation action arises from a lease executed by defendant and plaintiff's insured. The lease contains an attorneys' fees clause which awards attorneys' fees, costs and expenses to the prevailing party in any action for the recovery of damages due under the lease provisions. An insurer is entitled to the benefits of an attorneys' fees clause in an action arising out of the a lease between its insured and the defendant. *Allstate v. Loo* (1996) 46 Cal.App.4th 1794, 1799.

Trial in this action was set for May 30, 2014. Defendant failed to appear, and plaintiff was awarded judgment in the amount of \$77,289.13. As the prevailing party, plaintiff is entitled to its reasonable attorneys' fees. Plaintiff requests \$6,807.50 in attorneys' fees, at the rate of \$175 per hour, plus an additional \$547.66 in expenses for airfare, rental car, and airport parking. The court finds counsel's hourly rate to be reasonable in light of the reasonable hourly rate prevailing in the community for similar services. The court also finds the time spent and attorneys' fees incurred in this action to be reasonable. Accordingly, plaintiff is awarded \$6,807.50 in attorneys' fees from defendant.

Plaintiff also requests \$547.66 in expenses beyond costs allowable by statute, based on the lease provision allowing for recovery of “expenses” to the prevailing party. Regardless of such language, litigation expenses that are not allowed by statute are not recoverable by prevailing parties. *See Ripley v. Pappadopoulos* (1994) 23 Cal.App.4th 1616, 1625. Thus, plaintiff’s request for \$547.66 in expenses is denied.

**9. S-CV-0034103 Rodemann, Paul A. vs. EMC Mortgage, Inc., et al**

The demurrer to first amended complaint is continued to August 5, 2014 at 8:30 a.m. in Department 32 to be heard by the Honorable Mark S. Curry.

**10. S-CV-0034255 Heard, William vs. Ford Motor Company**

The hearing regarding appointment of discovery referee is continued to September 16, 2014 at 8:30 a.m. in Department 40.

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